

VETO OF HOUSE BILL.

AUSTIN, March 15, 1879.³⁴

To the Honorable House of Representatives of the State of Texas in session assembled:

Gentlemen—I herewith return a bill that originated in your honorable body, entitled “An act to revive ‘an act incorporating the New Braunfels Academy,’ passed February 5, 1858,” without my approval, together with my objections to it becoming a law.

The first and second sections of the bill creates a private corporation, “The New Braunfels Academy,” with power to hold \$200,000 worth of property, making the citizens of the city of New Braunfels the stockholders thereof, and vesting in six citizens and the mayor of said city and the county judge of Comal county the full right to administer the property and regulate the school in said institution of learning in the said city.

The fifth section of the bill authorizes the corporate authorities of said city to levy and collect a special tax, not exceeding the State ad valorem tax upon property within the city, which shall, when collected, be turned over to the treasurer of said institution; provided, that an election to be ordered by the mayor, by a vote of a majority of two-thirds of the taxpayers of said city, it shall be decided to have such tax levied and collected.

By section 6 it is provided that the act shall continue in force for fifty years.

The corporation which this bill seeks to revive, was chartered by a special law, or private act of the Legislature of 1858, to continue in force twenty years.

The charter having expired and no longer subsisting, the tenth section of the eleventh article of the Constitution, providing for a levy of taxes in support of such an academy that may be in existence does not apply to and support it. The object of that section was to prevent such a charter during its continuance, if any such existed, from being interfered with by other provisions of the Constitution, antagonistic to such chartered rights; but not to authorize new charters with such powers to be granted by the Legislature.

This bill provides for a new charter, and as to the power of the Legislature to grant it, it stands on the same footing as though no previous charter had ever been granted of a similar character. The title given to it could not alter its attitude in that regard.

This charter in effect makes the citizens of the city the stockholders of a corporation without their consent, which may be done in a municipal corporation, only because it is an instrumentality of government and part of the government, for the execution of the laws in the protection of the rights of the people through the officers of the government.

It pledges the property of the citizens of the city for fifty years to the burden of a contribution or assessment as stockholders, in the

shape of a tax at the will of taxpayers, who are citizens, upon a vote of two-thirds majority, whenever the election is held, so as to put it in operation, thereby binding all those who may become citizens afterward to the extent of their property in the city without their consent as stockholders.

If all the citizens, by articles of agreement, had consented to become stockholders, and had bound their property to the burden of such an assessment annually, still they would have no right to impose such a burden upon the property within the city of persons who are not citizens and stockholders. This charter does that. These attributes show it to be a private and not a public corporation. It is a private corporation because, although it may be created and carried on for the general good in the promotion of education, it is by its terms, placed under the control and management of private persons, according to their discretion, except as limited by the charter.

It is, therefore, contrary to the Constitution (article 12, section 1), which provides that "no private corporation shall be created except by general laws." It violates section 3 of article 8 of the Constitution, which provides that "taxes shall be levied and collected by general laws, and for public purposes only." This is a special and not a general law. It is not for a purpose that is public in the sense of the term here used. Public purposes here means the purposes or objects to which money collected by taxes can be applied under the Constitution and laws of the State by and through its officers or governmental agents in the administration of its civil government. It does not mean that taxes can be levied and collected to be disbursed at the discretion of private persons, not officers or agents of the government, although they may do it for a general public benefit, such as the promotion of education.

The bill also authorizes the levy and collection by the city authorities of a tax equal to the State tax in any one year, contrary to the 9th section of the 8th article of the Constitution, which prescribes that "no county, city or town shall levy more than one-half of the State tax, except for the payment of debts already incurred, and for the erection of public buildings not to exceed fifty cents on the one hundred dollars, in any one year, and except as in this Constitution is otherwise provided." There is no exception in the Constitution in favor of an academy to be chartered after the adoption of the Constitution.

The excellent management of schools by the city of New Braunfels heretofore might give assurance that this academy would be well managed in the interest of education if this bill became a law. But being, as I think, in conflict with the Constitution, I have been constrained to withhold my approval of the bill.

O. M. ROBERTS, Governor.

³⁴*House Journal*, 786-787.